initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

[T.D. 7318, 39 FR 25458, July 11, 1974; 39 FR 26154, July 17, 1974, as amended by T.D. 7340, 40 FR 1240, Jan. 7, 1975; T.D. 7955, 49 FR 19998, May 11, 1984; T.D. 7957, 49 FR 20812, May 17, 1984; T.D. 8069, 51 FR 1507, Jan. 14, 1986; 51 FR 5323, Feb. 13, 1986; 51 FR 6319, Feb. 21, 1986; T.D. 8540, 59 FR 30103, 30177, June 10, 1994; T.D. 8630, 60 FR 63919, Dec. 13, 1995; T.D. 8923, 66 FR 1043, Jan. 5, 2001]

§ 25.2522(c)–4 Disallowance of double deduction in the case of qualified terminable interest property.

No deduction is allowed under section 2522 for the transfer of an interest in property if a deduction is taken from the *total amount of gifts* with respect to that property by reason of section 2523(f). See § 25.2523(h)–1.

[T.D. 8522, 59 FR 9658, Mar. 1, 1994]

§ 25.2522(d)–1 Additional cross references.

(a) See section 14 of the Wild and Scenic Rivers Act (Pub. L. 90–542, 82 Stat. 918) for provisions relating to the claim and allowance of the value of certain easements as a gift under section 2522.

(b) For treatment of gifts accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as gifts to or for the use of the United States, see section 3 of Joint Resolution of December 24, 1969 (Pub. L. 91–160, 83 Stat. 443).

(c) For treatment of gifts accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as gifts to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Pub. L. 91–609 (84 Stat. 1809).

(d) For treatment of certain property accepted by the Chairman of the Administrative Conference of the United States, for the purpose of aiding and facilitating the work of the Conference, as gifts to the United States, see 5 U.S.C. 575(c)(12), as added by section 1(b) of the Act of October 21, 1972 (Pub. L. 92–526, 86 Stat. 1048).

(e) For treatment of the Board for International Broadcasting as a corporation described in section 2522(a)(2), see section 7 of the Board for International Broadcasting Act of 1973 (Pub. L. 93–129, 87 Stat. 459).

[T.D. 7318, 39 FR 25461, July 11, 1974]

§ 25.2523(a)–1 Gift to spouse; in general.

(a) *In general.* In determining the amount of taxable gifts for the calendar quarter (with respect to gifts made after December 31, 1970, and before January 1, 1982), or calendar year (with respect to gifts made before January 1, 1971, or after December 31, 1981), a donor may deduct the value of any property interest transferred by gift to a donee who at the time of the gift is the donor's spouse, except as limited by paragraphs (b) and (c) of this section. See § 25.2502–1(c)(1) for the definition of calendar quarter. This deduction is referred to as the *marital deduction*. In the case of gifts made prior to July 14, 1988, no marital deduction is allowed with respect to a gift if, at the time of the gift, the donor is a nonresident not a citizen of the United States. Further, in the case of gifts made on or after July 14, 1988, no marital deduction is allowed (regardless of the donor's citizenship or residence) for transfers to a spouse who is not a citizen of the United States at the time of the transfer. However, for certain special rules applicable in the case of estate and gift tax treaties, see section 7815(d)(14) of Public Law 101–239. The donor must submit any evidence necessary to establish the donor's right to the marital deduction.

(b) ''*Deductible interests*'' *and* ''*nondeductible interests*''—(1) *In general.* The property interests transferred by a donor to his spouse consist of either transfers with respect to which the marital deduction is authorized (as described in subparagraph (2) of this paragraph) or transfers with respect to which the marital deduction is not authorized (as described in subparagraph (3) of this paragraph). These transfers are referred to in this section and in §§ 25.2523(b)–1 through 25.2523(f)–1 as

''deductible interests'' and ''nondeductible interests'', respectively.

(2) ''*Deductible interest*''. A property interest transferred by a donor to his spouse is a ''deductible interest'' if it does not fall within either class of ''nondeductible interests'' described in subparagraph (3) of this paragraph.

(3) ''*Nondeductible interests*''. (i) A property interest transferred by a donor to his spouse which is a ''terminable interest'', as defined in §25.2523(b)–1, is a ''nondeductible interest'' to the extent specified in that section.

(ii) Any property interest transferred by a donor to the donor's spouse is a *nondeductible interest* to the extent it is not required to be included in a gift tax return for a calendar quarter (for gifts made after December 31, 1970, and before January 1, 1982) or calendar year (for gifts made before January 1, 1971, or after December 31, 1981).

(c) *Computation*—(1) *In general.* The amount of the marital deduction depends upon when the interspousal gifts are made, whether the gifts are terminable interests, whether the limitations of §25.2523(f)–1A (relating to gifts of community property before January 1, 1982) are applicable, and whether §25.2523(f)–1 (relating to the election with respect to life estates) is applicable, and (with respect to gifts made on or after July 14, 1988) whether the donee spouse is a citizen of the United States (see section 2523(i)).

(2) *Gifts prior to January 1, 1977.* Generally, with respect to gifts made during a calendar quarter prior to January 1, 1977, the marital deduction allowable under section 2523 is 50 percent of the aggregate value of the deductible interests. See section 2524 for an additional limitation on the amount of the allowable deduction.

(3) *Gifts after December 31, 1976, and before January 1, 1982.* Generally, with respect to gifts made during a calendar quarter beginning after December 31, 1976, and ending prior to January 1, 1982, the marital deduction allowable under section 2523 is computed as a percentage of the deductible interests in those gifts. If the aggregate amount of deductions for such gifts is $100,000 or less, a deduction is allowed for 100 percent of the deductible interests. No deduction is allowed for otherwise deductible interests in an aggregate amount that exceeds $100,000 and is equal to or less than $200,000. For deductible interests in excess of $200,000, the deduction is limited to 50 percent of such deductible interests. If a donor remarries, the computations in this paragraph (c)(3) are made on the basis of aggregate gifts to all persons who at the time of the gifts are the donor's spouse. See section 2524 for an additional limitation on the amount of the allowable deduction.

(4) *Gifts after December 31, 1981.* Generally, with respect to gifts made during a calendar year beginning after December 31, 1981 (other than gifts made on or after July 14, 1988, to a spouse who is not a United States citizen on the date of the transfer), the marital deduction allowable under section 2523 is 100 percent of the aggregate value of the deductible interests. See section 2524 for an additional limitation on the amount of the allowable deduction, and section 2523(i) regarding disallowance of the marital deduction for gifts to a spouse who is not a United States citizen.

(d) *Examples.* The following examples (in which it is assumed that the donors have previously utilized any specific exemptions provided by section 2521 for gifts prior to January 1, 1977) illustrate the application of paragraph (c) of this section and the interrelationship of sections 2523 and 2503.

Example 1. A donor made a transfer by gift of $6,000 cash to his spouse on December 25, 1971. The donor made no other transfers during 1971. The amount of the marital deduction for the fourth calendar quarter of 1971 is $3,000 (one-half of $6,000); the amount of the annual exclusion under section 2503(b) is $3,000; and the amount of taxable gifts is zero ($6,000 − $3,000 (annual exclusion) − $3,000 (marital deduction)).

Example 2. A donor made transfers by gift to his spouse of $3,000 cash on January 1, 1971, and $3,000 cash on May 1, 1971. The donor made no other transfers during 1971. For the first calendar quarter of 1971 the marital deduction is zero because the amount excluded under section 2503(b) is $3,000, and the amount of taxable gifts is also zero. For the second calendar quarter of 1971 the marital deduction is $1,500 (one-half of $3,000), and the amount of taxable gifts is $1,500 ($3,000 − $1,500 (marital deduction)).

Under section 2503(b) no amount of the second $3,000 gift may be excluded because the entire $3,000 annual exclusion was applied against the gift made in the first calendar quarter of 1971.

Example 3. A donor made a transfer by gift to his spouse of $10,000 cash on April 1, 1972. The donor made no other transfers during 1972. For the second calendar quarter of 1972 the amount of the marital deduction is $5,000 (one-half of $10,000); the amount excluded under section 2503(b) is $3,000; the amount of taxable gifts is $2,000 ($10,000 − $3,000 (annual exclusion) − $5,000 (marital deduction)).

Example 4. A donor made transfers by gift to his spouse of $2,000 cash on January 1, 1971, $2,000 cash on April 5, 1971, and $10,000 cash on December 1, 1971. The donor made no other transfers during 1971. For the first calendar quarter of 1971 the marital deduction is zero because the amount excluded under section 2503(b) is $2,000, and the amount of taxable gifts is also zero. For the second calendar quarter of 1971 the marital deduction is $1,000 (one-half of $2,000) (see section 2524); the amount excluded under section 2503(b) is $1,000 because $2,000 of the $3,000 annual exclusion was applied against the gift made in the first calendar quarter of 1971; and the amount of taxable gifts is zero ($2,000–$1,000 (annual exclusion) –$1,000 (marital deduction)). For the fourth calendar quarter of 1971, the marital deduction is $5,000 (one-half of $10,000); the amount excluded under section 2503(b) is zero because the entire $3,000 annual exclusion was applied against the gifts made in the first and second calendar quarters of 1971; and the amount of taxable gifts is $5,000 ($10,000 − $5,000 (marital deduction)).

Example 5. A donor made transfers by gift to his spouse of $2,000 cash on January 10, 1972, $2,000 cash on May 1, 1972, and a remainder interest valued at $16,000 on June 1, 1972. The donor made no other transfers during 1972. For the first calendar quarter of 1972, the marital deduction is zero because $2,000 is excluded under section 2503(b), and the amount of taxable gifts is also zero. For the second calendar quarter of 1972 the marital deduction is $9,000 (one-half of $16,000 plus one-half of $2,000); the amount excluded under section 2503(b) is $1,000 because $2,000 of the $3,000 annual exclusion was applied against the gift made in the first calendar quarter of 1971; and the amount of taxable gifts is $8,000 ($18,000 − $1,000 (annual exclusion) − $9,000 (marital deduction)).

Example 6. A donor made transfers by gift to his spouse of $2,000 cash on January 1, 1972, a remainder interest valued at $16,000 on January 5, 1972, and $2,000 cash on April 30, 1972. The donor made no other transfers during 1972. For the first calendar quarter of 1972, the marital deduction is $9,000 (one-half of $16,000 plus one-half of $2,000); the amount excluded under section 2503(b) is $2,000; and the amount of taxable gifts is $7,000 ($18,000 − $2,000 (annual exclusion) − $9,000 marital deduction)). For the second calendar quarter of 1972 the marital deduction is $1,000 (one-half of $2,000); the amount excluded under section 2503(b) is $1,000 because $2,000 of the $3,000 annual exclusion was applied against the gift of the present interest in the first calendar quarter of 1971; and the amount of taxable gifts is zero ($2,000 − $1,000 (annual exclusion) − $1,000 (marital deduction)).

Example 7. A donor made a transfer by gift to his spouse of $12,000 cash on July 1, 1955. The donor made no other transfers during 1955. For the calendar year 1955 the amount of the marital deduction is $6,000 (one-half of $12,000); the amount excluded under section 2503(b) is $3,000; and the amount of taxable gifts is $3,000 ($12,000 − $3,000 (annual exclusion) − $6,000 (marital deduction)).

Example 8. A donor made a transfer by gift to the donor's spouse, a United States citizen, of $200,000 cash on January 1, 1995. The donor made no other transfers during 1995. For calendar year 1995, the amount excluded under section 2503(b) is $10,000; the marital deduction is $190,000; and the amount of taxable gifts is zero ($200,000—$10,000 (annual exclusion)—$190,000 (marital deduction)).

(e) *Valuation.* If the income from property is made payable to the donor or another individual for life or for a term of years, with remainder to the donor's spouse or to the estate of the donor's spouse, the marital deduction is computed (pursuant to § 25.2523(a)–1(c)) with respect to the present value of the remainder, determined under section 7520. The present value of the remainder (that is, its value as of the date of gift) is to be determined in accordance with the rules stated in § 25.2512–5 or, for certain prior periods, § 25.2512–5A. See the example in paragraph (d) of § 25.2512–5. If the remainder is such that its value is to be determined by a special computation, a request for a specific factor, accompanied by a statement of the dates of birth of each person, the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments may be submitted by the donor to the Commissioner who, if conditions permit, may supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value, made in accordance with the

principles set forth in § 25.2512–5(d) or, for certain prior periods, § 25.2512–5A.

[T.D. 7238, 37 FR 28733, Dec. 29, 1972, as amended by T.D. 7955, 49 FR 19998, May 11, 1984, T.D. 8522, 59 FR 9658, Mar. 1, 1994; T.D. 8540, 59 FR 30103, June 10, 1994; 60 FR 16382, Mar. 30, 1995]

§ 25.2523(b)–1 Life estate or other terminable interest.

(a) *In general.* (1) The provisions of section 2523(b) generally disallow a marital deduction with respect to certain property interests (referred to generally as *terminable interests* and defined in paragraph (a)(3) of this section) transferred to the donee spouse under the circumstances described in paragraph (a)(2) of this section, unless the transfer comes within the purview of one of the exceptions set forth in § 25.2523(d)–1 (relating to certain joint interests); § 25.2523(e)–1 (relating to certain life estates with powers of appointment); § 25.2523(f)–1 (relating to certain qualified terminable interest property); or § 25.2523(g)–1 (relating to certain qualified charitable remainder trusts).

(2) If a donor transfers a terminable interest in property to the donee spouse, the marital deduction is disallowed with respect to the transfer if the donor spouse also—

(i) Transferred an interest in the same property to another donee (see paragraph (b) of this section), or

(ii) Retained an interest in the same property in himself (see paragraph (c) of this section), or

(iii) Retained a power to appoint an interest in the same property (see paragraph (d) of this section).

Notwithstanding the preceding sentence, the marital deduction is disallowed under these circumstances only if the other donee, the donor, or the possible appointee, may, by reason of the transfer or retention, possess or enjoy any part of the property after the termination or failure of the interest therein transferred to the donee spouse.

(3) For purposes of this section, a distinction is to be drawn between ''property,'' as such term is used in section 2523, and an ''interest in property.'' The ''property'' referred to is the underlying property in which various interests exist; each such interest is not, for this purpose, to be considered as ''property.'' A ''terminable interest'' in property is an interest which will terminate or fail on the lapse of time or on the occurrence or failure to occur of some contingency. Life estates, terms for years, annuities, patents, and copyrights are therefore terminable interests. However, a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity or term for years, is not a terminable interest.

(b) *Interest in property which another donee may possess or enjoy.* (1) Section 2523(b) provides that no marital deduction shall be allowed with respect to the transfer to the donee spouse of a ''terminable interest'' in property, in case—

(i) The donor transferred (for less than an adequate and full consideration in money or money's worth) an interest in the same property to any person other than the donee spouse (or the estate of such spouse), and

(ii) By reason of such transfer, such person (or his heirs or assigns) may possess or enjoy any part of such property after the termination or failure of the interest therein transferred to the donee spouse.

(2) In determining whether the donor transferred an interest in property to any person other than the donee spouse, it is immaterial whether the transfer to the person other than the donee spouse was made at the same time as the transfer to such spouse, or at any earlier time.

(3) Except as provided in § 25.2523(e)–1 or 25.2523(f)–1, if at the time of the transfer it is impossible to ascertain the particular person or persons who may receive a property interest transferred by the donor, such interest is considered as transferred to a person other than the donee spouse for the purpose of section 2523(b). This rule is particularly applicable in the case of the transfer of a property interest by the donor subject to a reserved power. See § 25.2511–2. Under this rule, any property interest over which the donor reserved a power to revest the beneficial title in himself, or over which the donor reserved the power to name